



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

FARMLAND PRESERVATION: AGRICULTURAL DISTRICT TAXES

House Bills 5030 and 5031
Sponsor: Rep. Howard Walker

House Bill 5032
Sponsor: Rep. John Moolenaar
Committee: Land Use and Environment

Complete to 10-28-03

A SUMMARY OF HOUSE BILLS 5030 - 5032 AS INTRODUCED 8-13-03

The bills, taken together, would allow an owner of farmland to designate the property as an “agricultural district”. The land and structures in the district would be exempt from general property taxes and would instead be subject to a newly created specific tax. An agricultural district could only contain farmland and structures devoted to agricultural use and would be established by applying to the governing body of the local governmental unit. The property owner and local unit would enter an agricultural district contract. Property in an agricultural district would be subject to the following special tax treatment.

- The specific tax on structures would be set at a rate 40 percent of the tax rate they would have been subject to if not exempted from property taxes. If structures that were devoted to an agricultural use on the effective date of the contract were no longer in agricultural use, then the local governmental body could terminate the benefits granted to those structures, but all other conditions of the contract would remain in effect.

- The specific tax on land would be a per-acre tax based on the number of years the agricultural district contract had been in effect, as follows: 1-2 years, \$18 per acre; 3-7 years, \$15 per acre; and 8 or more years, \$12 per acre. Land subject to a conservation easement would pay \$2 per acre.

- The specific taxes would be annual taxes, payable at the same times, in the same installments, and to the same officer or officers, as taxes collected under the General Property Tax Act. Taxes collected each year would be distributed to the state and cities, townships, village, school districts, counties, and authorities, at the same time and in the same proportions as taxes collected under the General Property Tax Act.

- The taxable value of farmland in an agricultural district that had been transferred between June 30, 1994 and December 31, 1999 would be reduced as if there had been no transfer. Property owners would have to file an affidavit with the local assessor and the register of deeds attesting that the property had been qualified agricultural property since June 30, 1994. An owner, however, would not be entitled to a refund.

[The constitution caps the amount that the taxable value of a parcel of property can increase from year to year to the rate of inflation or five percent, whichever is less. But when property is sold or transferred, the taxable value “pops up” to 50 percent of true cash value. The

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provision in the paragraph above would roll back any increases on property in an agricultural district that had occurred during those two dates.]

- Land subsequently converted to non-agricultural use would be subject to a lien of two percent of the true cash value of the land, plus one-half of one percent for each year the property had been subject to an agricultural district contract after the first two years. The lien amount could not exceed 10 percent of true cash value of the land. If the lien was paid within 30 days, it would not be recorded. Otherwise, the property owner would have seven years from the termination of the contract to pay and discharge the lien.

- Lien payments would be distributed as follows: 50 percent to the state general fund and to cities, townships, villages, school districts, counties, and authorities in the same proportion that property taxes on the property would be distributed; 8 percent to the county or counties where the property was located; 2 percent to the township or townships where the property was located; and 40 percent to the state's Agricultural Preservation Fund, with half of the proceeds to be used for grants to local units for the purchase of agricultural conservation easements and for the purchase of development rights.

House Bill 5030 would amend the Natural Resources and Environmental Protection Act or NREPA (MCL 324.36301 et al.) to create a new part, Part 363, entitled "Farmland Preservation – Agricultural Districts". House Bill 5031 would amend the General Property Tax Act (MCL 211.7ww) to provide an exemption for property subject to the new specific taxes created by House Bill 5030. House Bill 5032 would amend the Agricultural Property Recapture Act (MCL 211.1003 et al.) to exempt land subject to the new specific taxes. The bills are all tie-barred to one another, meaning none could take effect without all being enacted.

Additional information on the proposed legislation follows.

Agricultural district applications. An owner of farmland who wanted to establish an agricultural district would have to apply to the local governing body using a form prescribed by the Department of Agriculture. The application would have to contain all of the following: 1) the terms, restrictions, and conditions governing the agricultural district, as set forth in this legislation; 2) information reasonably necessary to classify as farmland the land that would be covered by the agricultural district contract, including both a land survey or a legal description of the land and a map showing the significant natural features, and all structures and physical improvements located on the land; and 3) a description of the structures to be covered by the district contract, and information reasonably necessary to determine that those structures are devoted to an agricultural use.

Application approval or rejection. A local unit could charge an applicant a reasonable fee, not exceeding the cost of processing an application. If the local unit charged a fee, then the application would not be complete unless it had been accompanied by the fee. The clerk of the local governing body would be required to record the date of receipt of the application, and hold a hearing on the application within 42 days, following the Open Meetings Act. The local governmental body would then be required to do either of the following.

1) The local unit would approve the application if all the land proposed for the agricultural district was farmland, and all the structures were devoted to an agricultural use. If no action were taken, then the application would be considered approved. In either case, the approval would be recorded by the clerk, and the application would constitute a legally binding agricultural district contract.

2) The local unit would reject the application if any of the land proposed for inclusion in the district was not farmland, or if any of the structures were not devoted to an agricultural use. This action also would be recorded by the clerk, and the reasons for the rejection would be written on the application before it was returned to the owner.

Application rejection appeal. Within 28 days after a rejection, an owner could appeal by filing the rejected application with the state Department of Agriculture, and the department would have to either approve or reject the application, following a similar protocol to that described above for local governmental units. If approved, the application would be returned to the clerk of the local governing body; if rejected, then the reasons for rejection would be noted on the application, and it would be returned to the owner.

Recording agricultural district contracts. Upon approval of an application, or upon receiving an application that had been approved by the Department of Agriculture, the clerk of the local governing body would be required to record the agricultural district contract with the register of deeds of the county in which the land was located. In addition, the clerk would be required to notify the applicant, the local unit's assessing office, the Department of Agriculture, and the Department of Treasury that the contract had been recorded. The bill also specifies that a contract that was approved by November 1 would take effect in that tax year.

Covenant/Development Rights. An agricultural district contract would be a covenant that runs with the land. An owner of land in an agricultural district could voluntarily convey development rights or any other interest in the land without penalty; however, the use of the land by the successor in title would remain subject to the agricultural district contract. Under the bill, the seller would be required to notify the Department of Agriculture, and the local governing body, of any change in ownership of the land. If a state or local governmental entity acquired development rights to land in an agricultural district, whether or not any other interest in the land was acquired, the appraised value of the development rights would not be considered to be reduced by the land's inclusion in the agricultural district.

Special assessments and tax credits. The bill specifies that special assessments on land in an agricultural district would be subject to Section 36108 of NREPA, which deals with land for which a development rights agreement or easement has been recorded. That section says that a city, village, township, county, or other governmental agency cannot impose a special assessment for sanitary sewers, water, lights, or nonfarm drainage on land unless the assessments were imposed before the recording of the development rights agreement or easement. Land covered by the exemption is denied use of an improvement created by the special assessment until it has paid the portion of the assessment directly attributable to the actual use of the improvement. Special assessments, with some limitations, can be imposed when the agreement or easement is terminated.

Further, land in an agricultural district would be eligible for a state income tax or single business tax credit under Section 36109 of NREPA (Farmland and Open Space Preservation credits), and would be subject to the tax credit repayment requirements under Section 36111 upon termination of the agricultural district contract, in the same manner as land that is subject to a development rights agreement or agricultural conservation easement. All tax benefits received by an owner of land, because of the land's inclusion in an agricultural district, would be taken into account in determining the amount of property tax for the purpose of calculating the tax credit under Section 36109.

Liens. Until the agricultural district tax was paid, the property upon which the tax was levied would be subject to a lien for the amount of the agricultural district tax. The lien could be foreclosed in the same manner as provided by law for the foreclosure in the circuit courts of mortgage liens upon real property. However, before foreclosure proceedings were initiated, the officer to whom the agricultural district tax was first payable would be required to file with the register of deeds a certificate of nonpayment of the tax, together with an affidavit of proof of service of the certificate of nonpayment upon the owner by certified mail.

Assessments. The bill specifies that the assessor of the local tax collecting unit in which the property was located would be required to separately assess any structures covered by the contract, any structures not covered by the contract, and land covered by the contract. The appropriate assessor under the General Property Tax Act would be required to annually determine an assessment of the structures devoted to an agricultural use, as well as the land within the agricultural district, which would have been made under the General Property Tax Act, if the agricultural district had not been in effect. The owner of land or structures in an agricultural district would be required to furnish to the assessor the information that he or she needed for the determination.

Rules. Finally, the bill specifies that the Department of Agriculture could promulgate rules to implement this legislation, under the Administrative Procedures Act.

Definitions. The definitions of "agricultural use" and of "farmland" would be the same as those currently found in Section 36101 and which apply to the Farmland and Open Space Preservation program

Analyst: J. Hunault/C.Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.